

Sep 27, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LEA K.,

Plaintiff,

v.

MARTIN O'MALLEY  
COMMISSIONER OF SOCIAL  
SECURITY,<sup>1</sup>

Defendant.

No. 2:23-CV-00260-RHW

REPORT AND RECOMMENDATION

**BEFORE THE COURT** is Plaintiff's Opening Brief and the Commissioner's Brief in response. ECF Nos. 10, 12. Attorney Victoria Chhagan represents Lea K. (Plaintiff); Special Assistant United States Attorney Frederick Fripps represents the Commissioner of Social Security (Defendant). This matter was referred to the undersigned magistrate judge for issuance of a report and recommendation. ECF No. 14. After reviewing the administrative record and the briefs filed by the parties, the Court **RECOMMENDS** Plaintiff's Motion, ECF No. 10, be granted and Defendant's Motion, ECF No. 12, be denied.

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d), Martin O'Malley, Commissioner of Social Security, is substituted as the named Defendant.

## I. JURISDICTION

Plaintiff filed applications for Disability Insurance Benefits and Supplemental Security Income on October 1, 2019, alleging onset of disability beginning October 1, 2019. Tr. 15, 86, 283-92. The applications were denied initially and upon reconsideration. Tr. 138-51, 154-62. Administrative Law Judge (ALJ) David J. Begley held a hearing on June 10, 2022, Tr. 51-85, and issued an unfavorable decision on June 29, 2022. Tr. 12-41. The Appeals Council denied Plaintiff's request for review on July 5, 2023, Tr. 1-6, and the ALJ's decision became the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on September 7, 2023. ECF No. 1.

## II. STATEMENT OF FACTS

The facts of the case are set forth in detail in the transcript of proceedings and the ALJ's decision and only briefly summarized here. Plaintiff was born in March 1994 and was 25 years old on the alleged onset date. Tr. 33. She has a GED. *Id.*

## III. STANDARD OF REVIEW

The ALJ is tasked with "determining credibility, resolving conflicts in medical testimony, and resolving ambiguities." *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098.

Put another way, substantial evidence “is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971), (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). If the evidence is susceptible to more than one rational interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1098; *Morgan v. Comm’r of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or if conflicting evidence supports a finding of either disability or non-disability, the ALJ’s determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Browner v. Sec’y of Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988).

#### IV. SEQUENTIAL EVALUATION PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four the claimant bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a physical or mental impairment prevents the claimant from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show: (1) that Plaintiff can perform other substantial gainful activity; and (2) that a significant number of jobs exist in the national economy which Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1497-1498 (9th Cir. 1984); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012). If a claimant cannot

1 make an adjustment to other work in the national economy, the claimant will be  
2 found disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

3 **V. ADMINISTRATIVE DECISION**

4 On June 29, 2022, the ALJ issued a decision finding Plaintiff was not  
5 disabled as defined in the Social Security Act. Tr. 15-35.

6 At *step one*, the ALJ found Plaintiff, who met the insured status  
7 requirements of the Social Security Act through December 31, 2020, had not  
8 engaged in substantial gainful activity since the alleged onset date. Tr. 18.

9 At *step two*, the ALJ determined Plaintiff had the following severe  
10 impairments: post-traumatic stress disorder (PTSD), bipolar disorder, major  
11 depressive disorder, generalized anxiety disorder, borderline personality disorder,  
12 and panic disorder. *Id.*

13 At *step three*, the ALJ found Plaintiff did not have an impairment or  
14 combination of impairments that met or medically equaled the severity of one of  
15 the listed impairments. Tr. 21.

16 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found  
17 she could perform light work, with the following limitations:

18 [Plaintiff] needs to avoid concentrated exposure to hazardous  
19 machinery and unprotected heights; she is able to understand,  
20 remember, and carry out simple instructions; she is able to use  
21 judgement and make simple work related decisions; she needs to avoid  
22 direct interaction with the general public; and she is limited to only  
23 occasional interaction with coworkers and supervisors, but she is  
prohibited from performing any tandem tasks.

24 Tr. 23.

25 At *step four*, the ALJ found Plaintiff had no past relevant work. Tr. 33.

26 At *step five*, the ALJ found that, based on the testimony of the vocational  
27 expert, and considering Plaintiff's age, education, work experience, and RFC,  
28 Plaintiff could perform jobs that existed in significant numbers in the national

1 economy, including the jobs of price marker, packager, and silverware wrapper.  
2 Tr. 34.

3 The ALJ thus concluded Plaintiff was not under a disability within the  
4 meaning of the Social Security Act at any time from the alleged onset date through  
5 the date of the decision. Tr. 35.

## 6 VI. ISSUES

7 Plaintiff seeks judicial review of the Commissioner's final decision denying  
8 her disability insurance benefits under Title II and Title XVI of the Social Security  
9 Act. The question presented is whether substantial evidence supports the ALJ's  
10 decision denying benefits and, if so, whether that decision is based on proper legal  
11 standards. Plaintiff raises the following issues for review: (1) whether the ALJ  
12 properly evaluated the medical opinion evidence; and (2) whether the ALJ properly  
13 evaluated Plaintiff's symptom complaints. ECF No. 10 at 1-2.

## 14 VII. DISCUSSION

### 15 A. Medical Opinion Evidence.

16 Plaintiff contends the ALJ improperly evaluated the medical opinions of  
17 Raul Padilla, ARNP; Shara Lozier, LMHC; Michael Regets, PhD; and Rita  
18 Flanagan, PhD. ECF No. 10 at 4-16.

19 For claims filed on or after March 27, 2017, the ALJ must consider and  
20 evaluate the persuasiveness of all medical opinions or prior administrative medical  
21 findings from medical sources. 20 C.F.R. §§ 404.1520c(a) and (b), 416.920c(a)  
22 and (b). The factors for evaluating the persuasiveness of medical opinions and  
23 prior administrative findings include supportability, consistency, the source's  
24 relationship with the claimant, any specialization of the source, and other factors  
25 (such as the source's familiarity with other evidence in the file or an understanding  
26 of Social Security's disability program). 20 C.F.R. §§ 404.1520c(c)(1)-(5),  
27 416.920c(c)(1)-(5).  
28

1 Supportability and consistency are the most important factors, and the ALJ  
2 must explain how both factors were considered. 20 C.F.R. §§ 404.1520c(b)(2),  
3 416.920c(b)(2). The ALJ may explain how she considered the other factors, but is  
4 not required to do so, except in cases where two or more opinions are equally well-  
5 supported and consistent with the record. *Id.* Supportability and consistency are  
6 explained in the regulations:

7 (1) *Supportability*. The more relevant the objective medical evidence  
8 and supporting explanations presented by a medical source are to  
9 support his or her medical opinion(s) or prior administrative medical  
10 finding(s), the more persuasive the medical opinions or prior  
administrative medical finding(s) will be.

11 (2) *Consistency*. The more consistent a medical opinion(s) or prior  
12 administrative medical finding(s) is with the evidence from other  
13 medical sources and nonmedical sources in the claim, the more  
14 persuasive the medical opinion(s) or prior administrative medical  
finding(s) will be.

15 20 C.F.R. §§ 404.1520c(c)(1)-(2), 416.920c(c)(1)-(2).

16 The Ninth Circuit addressed the issue of whether the 2017 regulatory  
17 framework displaced the longstanding case law requiring an ALJ to provide  
18 specific and legitimate reasons to reject an examining provider's opinion. *Woods*  
19 *v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). The Court held that the new  
20 regulations eliminate any hierarchy of medical opinions, and the specific and  
21 legitimate standard no longer applies. *Id.* at 788-89, 792. The Court reasoned the  
22 "relationship factors" remain relevant under the new regulations, and thus the ALJ  
23 can still consider the length and purpose of the treatment relationship, the  
24 frequency of examinations, the kinds and extent of examinations that the medical  
25 source has performed or ordered from specialists, and whether the medical source  
26 has examined the claimant or merely reviewed the claimant's records. *Id.* at 790,  
27 792. Even under the 2017 regulations, an ALJ must provide an explanation  
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1 supported by substantial evidence when rejecting an examining or treating doctor's  
2 opinion as unsupported or inconsistent. *Id.* at 792.

3 **1. Mr. Padilla.**

4 On January 25, 2020 Raul A. Padilla, ARNP, conducted a psychological  
5 consultative examination on behalf of DDS and rendered an opinion on Plaintiff's  
6 level of functioning. Tr. 407-12. Mr. Padilla diagnosed Plaintiff with PTSD, panic  
7 disorder, bipolar disorder, major depression, and generalized anxiety disorder.  
8 Tr. 411. Mr. Padilla opined Plaintiff had the ability to reason but that it was  
9 adversely affected when psychiatric symptoms occurred. *Id.* He opined she could  
10 understand abstract concepts, procedures, and tasks but "does have memory  
11 issues." *Id.* He opined "recent memory does not appear to be an issue . . .  
12 [h]owever, with remote memory there appears to be moderate to extreme  
13 difficulties and long periods she cannot remember in her past." *Id.* He opined  
14 Plaintiff was unable to sustain concentration at work or in public environments due  
15 to manifestation of her symptoms, and "once these symptoms exacerbate, she is  
16 not able to continue the tasks that are required at work or in a social environment  
17 such as shopping." *Id.* He noted "a history of these symptoms appears to have  
18 adversely affected social interaction and often she prefers to stay at home and  
19 requires significant support in order to engage socially" and opined "[a]daption is  
20 possible at home, but does not appear to be possible at a work environment." *Id.*

21 The ALJ found Mr. Padilla's opinion somewhat persuasive because his  
22 opinion that her recent memory was not impaired was consistent with his  
23 examination. Tr. 31. The ALJ found Mr. Padilla's opinion less persuasive,  
24 however, because it was based on a one-time examination and relied in part on  
25 Plaintiff's subjective complaints; it was inconsistent with Dr. Nelson's opinion;  
26 mental health records showed Plaintiff responded to treatment; and another  
27  
28



1 provider opined that Plaintiff significantly underestimated her executive  
2 functioning. Tr. 31-32.

3 First, the ALJ found Mr. Padilla's opinion only somewhat persuasive  
4 because it was based on a one-time examination and relied in part on Plaintiff's  
5 subjective complaints. Plaintiff contends the fact Mr. Padilla saw Plaintiff only  
6 once and relied on Plaintiff's subjective complaints were not sufficient reasons to  
7 reject his opinion because the ALJ acknowledged his expertise, Mr. Padilla is a  
8 mental health specialist, DDS requested Mr. Padilla perform the evaluation, and all  
9 providers rely in part on Plaintiff's subjective complaints. ECF No. 10 at 5-6, 8-9.  
10 Defendant contends substantial evidence supported the evaluation of Mr. Padilla's  
11 opinion. ECF No. 12 at 7-9. The factors for evaluating the persuasiveness of  
12 medical opinions and prior administrative findings include supportability,  
13 consistency, the source's relationship with the claimant, any specialization of the  
14 source, and other factors (such as the source's familiarity with other evidence in  
15 the file or an understanding of Social Security's disability program). 20 C.F.R.  
16 §§ 404.1520c(c)(1)-(5), 416.920c(c)(1)-(5). Additionally, the Ninth Circuit in  
17 *Ghanim* contemplated that medical sources rely on self-reports to varying degrees  
18 and held that an ALJ may reject a medical source's opinion as based on unreliable  
19 self-reports only when the medical source relied "more heavily on a patient's self-  
20 reports than on clinical observations." *Ghanim v. Colvin*, 763 F.3d 1154, 1162  
21 (9th Cir. 2014).

22  
23 Here, while the ALJ discounted Mr. Padilla's opinion because he only saw  
24 Plaintiff once, earlier in the discussion the ALJ credited the examiner because the  
25 one-time psychological consultative examination was performed at the request of  
26 DDS, and the ALJ also found that Mr. Padilla was "an expert and is familiar with  
27 the Social Security . . . programs." Tr. 31. Mr. Padilla also explained in his report  
28 that he reviewed medical records and he performed a history and mental status



1 exam and supported his opinion of Plaintiff's level of functioning with explanation  
2 of his observations and findings. Tr. 407-12. While Mr. Padilla did note that some  
3 historical information in his report was based on Plaintiff's statements during the  
4 evaluation, he also documented his clinical interview and mental status exam and  
5 noted objective findings including observation of Plaintiff's subdued and anxious  
6 mood with congruent affect, some abnormal thought content, and evidence of  
7 "poor remote memory for multiple periods of her life" during that exam. Tr. 407,  
8 410. Mr. Padilla had some familiarity with Plaintiff's records and documented his  
9 exam, observations, and clinical findings in support of his opinion, and the ALJ  
10 also credited portions of the opinion because of his expertise and the fact that the  
11 one-time evaluation was performed at the request of DDS. Tr 31. There is also no  
12 indication Mr. Padilla relied more heavily on patient's self-reports than on his own  
13 clinical observations. On this record, the ALJ's conclusion that Mr. Padilla's  
14 opinion was less persuasive because it was a one-time exam based in part on  
15 Plaintiff's subjective complaints is not supported by substantial evidence.

16 The ALJ also found Mr. Padilla's opinion Plaintiff had moderate to extreme  
17 limitations in her remote memory unpersuasive because it was not consistent with  
18 Dr. Nelson's opinion. Tr. 32. The more consistent an opinion is with the evidence  
19 from other sources, the more persuasive the opinion is. 20 C.F.R. §§  
20 404.1520c(c)(2), 416.920c(c)(2). Here, the ALJ cited a portion of an opinion by  
21 Dr. Nelson where she explained that in terms of ADHD, Plaintiff's "extensive  
22 history of trauma, and the pervasive nature of cognitions associated with her  
23 personality disorder, her chronic marijuana use," and caring for young children  
24 were all likely to have substantial impacts on the Plaintiff's attention; Dr. Nelson  
25 opined that with "targeted personality and trauma treatment, [Plaintiff] should  
26 expect her attention and memory complaints to improve substantially." Tr. 32.  
27 (citing Tr. 1225). The ALJ failed to sufficiently address this opinion, however, and  
28

1 selectively cited from it; Dr. Nelson performed a neuropsychological evaluation in  
2 March 2021 and provided findings and an opinion concerning additional  
3 limitations that are not addressed by the ALJ anywhere in the decision. Tr. 1218-  
4 25. Dr. Nelson opined, for example, just prior to the selection cited by the ALJ,  
5 that Plaintiff's avoidant personality disorder "appears to be so pervasive that it is  
6 causing cognitive distortions akin to paranoia that interfere with her brain's  
7 capacity for attention and therefore memory." Tr. 1225.

8 The ALJ is required to articulate the persuasiveness of all medical opinions  
9 in the case record using the factors listed in 20 C.F.R. §§ 404.1520c and 416.920c.  
10 Additionally, an ALJ must consider all of the relevant evidence in the record and  
11 may not point to only those portions of the records that bolster his findings. *See,*  
12 *e.g., Holohan v. Massanari*, 246 F.3d 1195, 1207-08 (9th Cir. 2011) (holding that  
13 an ALJ cannot selectively rely on some entries in plaintiff's records while ignoring  
14 others). Here, the ALJ found Mr. Padilla's opinion only somewhat persuasive  
15 because it was inconsistent with Dr. Nelson's opinion, but the ALJ cited a brief  
16 portion of Dr. Nelson's opinion and failed to address relevant portions of that  
17 opinion that appear more consistent with Mr. Padilla's opinion or to address the  
18 persuasiveness of Dr. Nelson's opinion using the factors as required by the  
19 regulations. Tr. 32, 1218-25. Accordingly, the ALJ erred as he failed to fully  
20 address/account for Dr. Nelson's opinion. In full, Dr. Nelson's opinion appears  
21 more consistent with Mr. Padilla's opinion that Plaintiff has significant memory  
22 and attention issues; and in selectively citing portions of Dr. Nelson's opinion to  
23 discount Mr. Padilla's opinion, the ALJ's conclusions are also not supported by  
24 substantial evidence.  
25

26 Additionally, as Plaintiff points out, Dr. Nelson's opinion concerning future  
27 improvement with targeted personality and trauma treatment is not relevant to  
28 Plaintiff's limitations during the period at issue. ECF No. 10 at 7. Without the

1 ALJ offering more than his stated conclusions, the Court is unable to meaningfully  
2 review whether the ALJ's interpretation of the evidence is reasonable. *See Brown-*  
3 *Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015); *Embrey v. Bowen*, 849 F.2d  
4 418, 421-22 (9th Cir. 1988) (requiring the ALJ to identify the evidence supporting  
5 the found conflict to permit the Court to meaningfully review the ALJ's finding).

6 The ALJ also discounted the opinion of Mr. Padilla (and Dr. Nelson)  
7 because Plaintiff responded to treatment and because another provider, Ms. Delsol,  
8 "believed that [Plaintiff] significantly underestimated her executive functioning"  
9 based on ability to coordinate her family's care, navigate custody proceedings for  
10 her stepdaughter, and pursue a loan and navigate home buying process. Tr. 32.  
11 However, as discussed *supra*, the ALJ selectively relied on portions of the record  
12 that showed milder findings while failing to discuss relevant evidence, including  
13 the evaluation and full opinion of Dr. Nelson, which showed more mixed results  
14 during the period at issue. Plaintiff also contends that evidence of the activities  
15 listed by the ALJ did not undermine Mr. Padilla's opinion that Plaintiff was unable  
16 to sustain concentration in a work setting or public environments due to  
17 manifestation of her symptoms, nor did Ms. Delsol address Plaintiff's ability to  
18 sustain concentration in a work setting. ECF No. 10 at 7-8. Indeed, at the August  
19 2021 appointment cited by the ALJ, Ms. Delsol noted findings from Dr. Nelson's  
20 neuropsychological evaluation, including updated primary diagnosis of avoidant  
21 personality disorder secondary to PTSD, depression, and ADHD, and explained  
22 that intensive personality disorder therapy was recommended. Tr. 1198. Ms.  
23 Delsol noted Plaintiff had stopped her medications, and mental status exam  
24 findings included loud speech, irritable mood, and impairment in short-term  
25 memory. Tr. 1200-01. Again, the ALJ focused on evidence that supported his  
26 conclusions concerning Mr. Padilla's opinion when the longitudinal record shows  
27 more mixed findings. Without further analysis, on this record the ALJ's  
28

1 discounting of Mr. Padilla's opinion because Plaintiff responded to treatment and  
2 another provider believed she underestimated her executive functioning is also not  
3 supported by substantial evidence.

4 The ALJ's reasons to discount Mr. Padilla's opinion are not supported by  
5 substantial evidence.

6 **2. Ms. Lozier and State Agency Consultants.**

7 Plaintiff also contends the ALJ improperly evaluated the medical opinions of  
8 Shara Lozier, LMHC, Michael Regets, PhD, and Rita Flanagan, PhD. ECF No. 10  
9 at 4-16.

10 As the claim is remanded for the errors in assessing Mr. Padilla's opinion,  
11 the Court declines to further address the issue. Upon remand the ALJ will reassess  
12 all medical opinion evidence with the assistance of medical expert testimony and  
13 using the factors as required by the regulations. The ALJ will adopt the limitations  
14 in an opinion or provide reasons supported by substantial evidence to discount the  
15 opinion.

16 **B. Symptom Claims.**

17 Plaintiff contends the ALJ also improperly rejected Plaintiff's symptom  
18 complaints. ECF No. 10 at 15-19.

19 It is the province of the ALJ to make determinations regarding a claimant's  
20 subjective statements. *Andrews*, 53 F.3d at 1039. However, the ALJ's findings  
21 must be supported by specific, cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229,  
22 1231 (9th Cir. 1990). Once the claimant produces medical evidence of an  
23 underlying medical impairment, the ALJ may not discredit testimony as to the  
24 severity of an impairment merely because it is unsupported by medical evidence.  
25 *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence  
26 of malingering, the ALJ's reasons for rejecting the claimant's testimony must be  
27 "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir.  
28

1 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). “General findings are  
2 insufficient: rather the ALJ must identify what testimony is not credible and what  
3 evidence undermines the claimant’s complaints.” *Lester* at 834; *Dodrill v. Shalala*,  
4 12 F.3d 915, 918 (9th Cir. 1993); *see also Smartt v. Kijakazi*, 53 F.4th 489, 499  
5 (9th Cir. 2022) (“Ultimately, the ‘clear and convincing’ standard requires an ALJ  
6 to show [their] work[.]”). “Thus, to satisfy the substantial evidence standard, the  
7 ALJ must provide specific, clear, and convincing reasons which explain why the  
8 medical evidence is *inconsistent* with the claimant’s subjective symptom  
9 testimony.” *Ferguson v. O’Malley*, 95 F.4th 1194, 1200 (9th Cir. 2024) (emphasis  
10 in original).

11 Here, the ALJ concluded Plaintiff’s medically determinable impairments  
12 could reasonably be expected to cause the alleged symptoms; however, Plaintiff’s  
13 statements concerning the intensity, persistence, and limiting effects of those  
14 symptoms were not entirely consistent with the medical evidence and other  
15 evidence in the record. Tr. 28.

16 Plaintiff contends the ALJ failed to provide clear and convincing reasons for  
17 rejecting Plaintiff’s testimony, and that the ALJ’s reasoning was not entirely clear  
18 and consisted of a summary of mental health records without analysis of which  
19 records supported the ALJ’s analysis and why. ECF No. 10 at 15-19. Defendant  
20 contends the ALJ reasonably discounted Plaintiff’s subjective complaints. ECF  
21 No. 12 at 3-6.

22 First, the ALJ discounted Plaintiff’s symptom claims because she received  
23 “no more than routine mental health care.” Tr. 25. The ALJ provided no analysis  
24 or explanation of this finding, however, and proceeded to summarize various  
25 mental health records. Tr. 25-30. While Defendant contends “the record contained  
26 primarily evidence of conservative and routine treatment . . . [as] the ALJ noted,  
27 Plaintiff’s medical records . . . did not show that she had received more than  
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1 routine mental health care,” ECF No. 12 at 4-5, the ALJ did not make a finding  
2 that Plaintiff’s treatment was conservative, Tr. 15-35, and the Court will not  
3 consider Defendant’s post hoc rationalization. *See Orn v. Astrue*, 495 F.3d 625,  
4 630 (9th Cir. 2007) (The Court will “review only the reasons provided by the ALJ  
5 in the disability determination and may not affirm the ALJ on a ground upon which  
6 he did not rely.”). Indeed, the ALJ concluded only that records “do not show that  
7 the claimant received more than routine mental health care” and summarized some  
8 of Plaintiff’s records but failed to explain or offer any analysis of how or why this  
9 was inconsistent with Plaintiff’s symptom claims. Tr. 25.

10 The ALJ noted, for example, without analysis, that Plaintiff had seen a  
11 psychiatrist, took medications including bupropion, lamotrigine, and lorazepam for  
12 impairments including PTSD, a bipolar disorder, and anxiety, and that she “was  
13 participating in therapy and outpatient programs”; and records also show she was  
14 referred for psychiatric and neuropsychiatric evaluations and trauma specific  
15 therapy during the period at issue due to persistent symptoms, with additional  
16 diagnoses including a personality disorder and ADHD. Tr. 25-30; *see, e.g.*, Tr.  
17 372-73, 444-50, 461-62, 1003, 1198, 1218-25. The ALJ provided no analysis or  
18 explanation, however, of why or how Plaintiff’s mental health care was only  
19 routine and/or inconsistent with her symptom claims. Tr. 18-30. “Although the  
20 ALJ’s analysis need not be extensive, the ALJ must provide some reasoning in  
21 order for us to meaningfully determine whether the ALJ’s conclusions were  
22 supported by substantial evidence.” *Treichler v. Comm’r of Soc. Sec. Admin.*, 775  
23 F.3d 1090, 1103 (9th Cir. 2014). Again, without the ALJ offering more than his  
24 stated conclusions, the Court is unable to meaningfully review whether the ALJ’s  
25 interpretation of the evidence is reasonable. *See Brown-Hunter*, 806 F.3d at 492.  
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27  
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1 On this record, without further analysis, the ALJ's conclusion Plaintiff  
2 received no more than routine mental health care was not a clear and convincing  
3 reason supported by substantial evidence to discount her symptom claims.

4 The ALJ also found that records showed Plaintiff improved with treatment  
5 and listed some of her activities or report of her activities, but again provided only  
6 a summary of records with little to no analysis. Tr. 25-30.

7 As the claim is remanded for reconsideration of the medical opinion  
8 evidence with the assistance of medical expert testimony, the Court declines to  
9 further address this issue. Upon remand the ALJ is also instructed to reevaluate  
10 Plaintiff's symptom claims in the context of the entire record.

#### 11 **VIII. CONCLUSION**

12 Having reviewed the record and the ALJ's findings, the Court finds the  
13 ALJ's decision is not supported by substantial evidence and not free of harmful  
14 error. The Court has the discretion to remand the case for additional evidence and  
15 findings or to award benefits. *Smolen*, 80 F.3d at 1292. The Court may award  
16 benefits if the record is fully developed and further administrative proceedings  
17 would serve no useful purpose. *Id.* Remand is appropriate when additional  
18 administrative proceedings could remedy defects. *Rodriguez v. Bowen*, 876 F.2d  
19 759, 763 (9th Cir. 1989). In this case, the Court finds that further proceedings are  
20 necessary to reassess conflicting medical opinions and to obtain medical expert  
21 testimony.

22 On remand, the ALJ is instructed to obtain all updated medical evidence.  
23 The ALJ shall reevaluate the medical evidence of record with the assistance of  
24 medical expert testimony. The ALJ will reassess the medical opinion evidence  
25 utilizing the factors required by the regulations, and will also reperform the  
26 sequential analysis, taking into consideration Plaintiff's symptom claims as well as  
27 any other evidence or testimony relevant to Plaintiff's disability claim.  
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1 Accordingly, **IT IS HEREBY RECOMMENDED** Plaintiff's Motion to  
2 reverse, **ECF No. 10**, be **GRANTED**; Defendant's Motion to affirm, **ECF No. 12**,  
3 be **DENIED**; and the District Court Executive enter **Judgment for Plaintiff**  
4 **REVERSING and REMANDING** the matter for further proceedings consistent  
5 with this recommendation pursuant to sentence four of 42 U.S.C. § 405(g).

### 6 **IX. OBJECTIONS**

7 Any party may object to a magistrate judge's proposed findings,  
8 recommendations or report within fourteen (14) days following service with a copy  
9 thereof. Such party shall file written objections with the Clerk of the Court and  
10 serve objections on all parties, specifically identifying the portions to which  
11 objection is being made, and the basis therefor. Any response to the objection  
12 shall be filed within fourteen (14) days after receipt of the objection. Attention is  
13 directed to Fed. R. Civ. P. 6(d), which adds additional time after certain kinds of  
14 service.

15 A district judge will make a *de novo* determination of those portions to  
16 which objection is made and may accept, reject, or modify the magistrate judge's  
17 determination. The judge need not conduct a new hearing or hear arguments and  
18 may consider the magistrate judge's record and make an independent  
19 determination thereon. The judge may, but is not required to, accept or consider  
20 additional evidence, or may recommit the matter to the magistrate judge with  
21 instructions. *United States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000); 28 U.S.C.  
22 § 636(b)(1)(B) and (C), Fed. R. Civ. P. 72; LMJR 2, Local Rules for the Eastern  
23 District of Washington.

24 A magistrate judge's recommendation cannot be appealed to a court of  
25 appeals; only the district judge's order or judgment can be appealed.  
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1 The District Court Executive is directed to update the docket sheet to reflect  
2 the substitution of Martin O'Malley as Defendant and file this Report and  
3 Recommendation and provide copies to counsel.

4 DATED September 27, 2024.



  
JAMES A. GOEKE  
UNITED STATES MAGISTRATE JUDGE